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U.S. Department of Homeland Security  
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Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**

*MI*

FILE:

Office: CALIFORNIA SERVICE CENTER

Date **MAY 25 2004**

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant is ineligible for TPS because he had been convicted of two misdemeanors, and because he had failed to submit the final court disposition of his arrest on June 2, 2000, as had been requested. The director, therefore, denied the application.

On appeal, the applicant asserts that he did submit a certified copy of his June 2, 2000 arrest as requested by the director. He states that he has successfully completed all the terms and conditions of formal probation, and that although he has another case that occurred on July 16, 1992, that case does not constitute a misdemeanor because it is a traffic violation. The applicant asserts that he has only one misdemeanor case in his records; therefore, he is eligible for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

The record reflects the following:

1. On May 29, 2000, in Bakersfield, California, the applicant was arrested and charged with Count 1, driving under the influence of alcohol/drugs, in violation of California Vehicle Code (VC) 23152(a), a misdemeanor; Count 2, driving under the influence with 0.08 percent alcohol in the blood, in violation of VC 23152(b), a misdemeanor; and Count 3, driving without a license, in violation of VC 12500(a), a misdemeanor. On May 31, 2000, in the Superior Court, South Division, Lamont Branch, County of Kern, State of California, Case No. LM061769A, the applicant entered a plea of guilty to Counts 1 and 3. The court found the applicant guilty as to Counts 1 and 3, and dismissed Count 2. The applicant was placed on probation as to Counts 1 and 3; ordered to pay fines in the amount of \$1,255 as to Count 1, and \$270 as to Count 3; and to serve 3 days in jail as to Count 1.

2. The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects that on June 2, 2000, in Santa Ana, California, the applicant was arrested and charged with Count 1, driving under the influence of alcohol or drug; Count 2, driving under the influence with 0.08 percent alcohol in the blood; Count 3, possession of open container while driving; and Count 4, hit and run, death/injury. Although the applicant claims that he submitted the court disposition of this arrest in response to the director's request, the record of proceeding does not contain the court documents for this arrest.

3. The applicant claims, on appeal, that he was arrested on July 16, 1992; however, that case does not constitute a misdemeanor because it is a traffic violation. The applicant, however, failed to submit the arrest report and the court's final disposition of this arrest.

Although the applicant claims that he had successfully completed all the terms and conditions of formal probation, completion of probation is not a dismissal of the conviction(s). The applicant, therefore, remains convicted of the two misdemeanor offenses (paragraph 1 above).

The applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least two misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

It is also noted that the applicant was ordered removed in absentia on February 11, 1994, at San Diego, California, based upon his apprehension there for illegal entry into the United States.

The burden of proof is upon the applicant to establish that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.